

MAR 18 2009

## SENATE RESOLUTION

REQUESTING AN INVESTIGATION INTO THE TRANSACTIONS CONCERNING THE  
HELANI CHURCH LOT BY MOKUAIKAUA CHURCH AND THE TREATMENT OF  
HUMAN REMAINS FOUND ON THE LOT.

1 WHEREAS, there is a certain parcel of property located on  
2 the Island of Hawaii, designated as the Helani Church Lot,  
3 situate at Kahaluu, North Kona, Hawaii, identified as Tax Map  
4 Key No. (3) 7-8-14:45 (the "Helani Church Lot"); and

5  
6 WHEREAS, the Helani Church Lot is currently owned by  
7 Mokuaiakaua Church (Congregational), a Hawaii nonprofit  
8 corporation ("Mokuaiakaua Church"); and

9  
10 WHEREAS, the Helani Church Lot is the site of the former  
11 Helani Church and contains an old church cemetery and numerous  
12 graves; and

13  
14 WHEREAS, in 1850, the Helani Church Lot was originally  
15 given to the Board of Education of the State of Hawaii by King  
16 Kalakaua for religious and educational purposes; and

17  
18 WHEREAS, the early Missionaries established a school in  
19 1853 and also conducted regular church services on the Helani  
20 Church Lot until 1967; and

21  
22 WHEREAS, the State of Hawaii sold the Helani Church Lot to  
23 the United Congregational and Evangelical Churches of Mokuaiakaua  
24 and Helani ("United Congregational"), a Hawaii nonprofit  
25 corporation; and

26  
27 WHEREAS, the Legislature finds that, in 1979, Mokuaiakaua  
28 Church acquired the Helani Church Lot from United Congregational  
29 pursuant to a Quitclaim Deed, dated March 15, 1979, recorded in  
30 the Bureau of Conveyances of the State of Hawaii, which  
31 Quitclaim Deed contained a provision stating that the grant was  
32 subject to the requirement that "[t]he real property shall be  
33 used by the Grantee or its affiliated or successor religious  
34 organizations for religious, educational and related uses" and  
35 that, "[s]hould the Grantee or its affiliated or successor



1 religious organizations fail and/or cease to use said real  
2 property for religious, educational and related uses, title in  
3 and to the property shall revert back to the State of Hawaii";  
4 and  
5

6 WHEREAS, in 1985, Mokuaikaua Church entered into an  
7 arrangement with Richard W. Clark and Patricia M. Clark (the  
8 "Clarks"), whereby the Clarks would lease the Helani Church Lot  
9 to Mokuaikaua Church and purchase in fee other adjacent or  
10 adjoining property from Mokuaikaua Church, in order for the  
11 Clarks to construct a condominium project; and  
12

13 WHEREAS, as part of the agreement regarding the condominium  
14 project, Mokuaikaua Church conveyed the Helani Church Lot to the  
15 Clarks, and the Clarks were to subdivide the Helani Church Lot  
16 from the adjoining property and then reconvey the Helani Church  
17 Lot to Mokuaikaua Church, none of which was done by the Clarks;  
18 and  
19

20 WHEREAS, the Clarks mortgaged the Helani Church Lot, which  
21 was subsequently foreclosed upon by the Clarks' mortgagees when  
22 the Clarks defaulted on their loans; and  
23

24 WHEREAS, the Clarks' mortgagees filed suit foreclosing on  
25 their liens, including the liens on the Helani Church Lot,  
26 pursuant to Merle v. Clark, Civil 87-0662, filed in the Third  
27 Circuit Court of the State of Hawaii (Kona Division); and  
28

29 WHEREAS, Mokuaikaua Church subsequently settled its claims  
30 with the Clarks' mortgagees, with Mokuaikaua Church receiving a  
31 release of the Clarks' mortgages on the Helani Church Lot,  
32 together with a quitclaim deed to the Helani Church Lot from the  
33 commissioner of the foreclosure action, and which settlement  
34 required Mokuaikaua Church to perform other actions (including  
35 subdividing the Helani Church Lot from other property where the  
36 condominium project was located); and  
37

38 WHEREAS, the Legislature finds that, since that time, the  
39 Helani Church Lot and the improvements thereon have further  
40 deteriorated and, although Mokuaikaua Church members and  
41 community members have attempted to clear debris from the  
42 property, there are reports of squatters erecting tents in the  
43 overgrown trees and brush; and  
44



1 WHEREAS, in August 2008, Kahu Derek Napoleon of Mokuaika  
2 Church sent out a newsletter to his congregation confirming that  
3 there are burials on the property, but called the ruins of the  
4 old church "dangerous" and that the Mokuaika Church intended  
5 to tear it down and "revive" the property and use it for  
6 worship, prayer, and various other church and "community"  
7 events; and

8  
9 WHEREAS, it has been reported that all of the remains in  
10 the old cemetery have been disinterred and moved to another site  
11 on the Helani Church Lot; and

12  
13 WHEREAS, it has also been reported that a shallow grave was  
14 discovered years ago during an archaeological survey, but that  
15 it was not disturbed, and that the Church dug a hole and  
16 reburied the bones, claiming that the bones were likely those of  
17 a homeless person, but that the Church did not contact the  
18 Hawaii Island Burial Council; and

19  
20 WHEREAS, the Legislature is troubled that this historic  
21 site is deteriorating and recognizes the need for the applicable  
22 state agencies to ensure the continued appreciation of this  
23 site; now, therefore,

24  
25 BE IT RESOLVED by the Senate of the Twenty-fifth  
26 Legislature of the State of Hawaii, Regular Session of 2009,  
27 that the Department of Health, the Department of the Attorney  
28 General, and the Department of Land and Natural Resources,  
29 Hawaii Island Burial Council are requested to investigate the  
30 allegations regarding the shallow grave and the movement of  
31 remains from the old cemetery, and whether state law was  
32 complied with by Mokuaika Church; and

33  
34 BE IT FURTHER RESOLVED that the Attorney General is  
35 requested to investigate the sale of the Church Lot to  
36 Mokuaika Church and whether the terms of any of the  
37 conveyances or transactions resulted in a reversion of the  
38 Helani Church Lot to the State of Hawaii, and whether the State  
39 of Hawaii has any claims or interest in or to the Helani Church  
40 Lot; and

41  
42 BE IT FURTHER RESOLVED that certified copies of this  
43 Resolution be transmitted to the Attorney General, the State  
44 Historic Preservation Officer of the Department of Land and



S.R. NO. 110

1 Natural Resources, the Chair of the Hawaii Island Burial  
2 Council, and the Director of Health.

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4  
5

OFFERED BY:

J. L. H.

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